Supreme Court, U.S.
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IN THE
SUPREME COURT OF THE UNITED STATES

PEPI SCHAFLER

Petitioner

v

RANDALL R. NEWSOME

Respondent

On Petition for Writ of Certiorari
To the Ninth Circuit Court of Appeals

AMENDED APPENDIX

TO PETITION FOR WRIT OF CERTIORARI

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

PEPI SCHAFLER
Plaintiff

No. C-01-4943 PJH

v

RANDALL R. NEWSOME
Defendant

JUDGMENT

_____/

This action came on for hearing before the court, the honorable Phyllis J. Hamilton presiding, and the issues having been duly heard , and a decision having been duly rendered ,
It is Ordered and Adjudged
that the plaintiff Pepi Schafler take nothing, and that the action be dismissed on the merits .
Dated March 20, 2002

ss/Phyllis Hamilton
United States District Judge.

ORDER RE MOTION TO DISMISS

Defendant's motion for an order to dismiss the complaint came on for hearing on March 20 2002, before the court the Honorable Phyllis J, Hamilton presiding. Plaintiff appeared in propria persona, and defendant appeared by this counsel , Assistant United States Attorney Scott T. Nonaka .Having read the parties papers and carefully considered their argument and the relevant legal authority, and good cause appearing , the court hereby grants defendant's motion for the following reasons:
Defendant Randall Newsome is United States bankruptcy judge . Plaintiff Pepi Schafler is a debtor in related bankruptcy actions that were pending before judge Newsome. Plaintiff asserts twenty one claims arising from Newsome's alleged actions in these bankruptcy actions. In particular , plaintiff accuses Newsome of bias , corruption, abuse of authority , and violation of her constitutional rights, claiming that he improperly "seized " all her assets. Plaintiff seeks equitable relief only, not money damages. Defendant now seeks an order pursuant to Federal Rule of Civil Procedure 12 (b) (6) dismissing the complaint for failure to state a claim. A court should dismiss for failure to state a claim under Rule 12 (b) (6) only where "it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which

would entitle him to relief."*Conley v Gibson, 355 U.S. 41, (1957) Madison & Sutro v lerner 31 F3rd 924 (9th Cir 1994).* In assessing the motion the court must accept as true the factual allegations of the complaint , and must construe them in the light most favorable to the non moving party. *National Wildlife Federation v Espy, 45 F 3rd 1337 (9th Cir, 1995).*Federal courts are particularly liberal in construing "inartful pleading by parties appearing pro se .*Hughes v Rowe ,449 U.S. 5, 9, (1990)* . In dismissing for failure to state a claim, "a district court should grant leave to amend even if no request to amend the pleading has been made , unless it determines that the pleading could not possibly be cured by the allegation of other facts" *Doe v United States , 58 3rd 494, (9th Cir 1995), (quoting Cook , Perkiss 7 Liehe , Inc v N. Cal . Coll Serv Inc , 911 F 2nd 242 , 247 9th Cir 1990).*

The court finds that this action must be dismissed because judge Newsome is entitled to absolute immunity. A federal judge is absolutely immune from civil liability for acts performed in his judicial capacity. unlike the judicial immunity available to state judges sued under 42 USC # 1983, a federal judge's immunity is not limited from damages , but extends to actions for declaratory , injunctive and other equitable relief. *Moore v Brewster, 96 F 3rd 1240 (9th Cir 1996),*cert denied *519 US 1118 (1997), Mullis v U.S. Bankruptcy Court, 828 F 2nd 1385 (9th Cir 1987)* cert denied *486 US 1040 (1988).* In the event that a federal judge violates a litigant's constitutional rights in a proceeding pending in federal court, Congress has provided carefully structured procedures for taking appeals and for petitioning for extraordinary writs in Title 28,of the United States Code .*Mullis 828 F 2nd at 1394.*

Judicial immunity generally is overcome only in two sets of circumstances .First a judge is not immune from liability for nonjudicial actions -that is ,actions not taken in the judge's judicial capacity. *Forrester v White , 484 US 219 227-229(1988) Stump v Sparkman , 435 US 349 360 (1978)* Second , a judge is not immune for actions , through judicial in nature , taken in the complete absence of jurisdiction .*Mireles v Waco 502 US 9 1991)* citing *Forrester 484 US at 356-357.*

As long as the judge has jurisdiction to perform the "general act" in question , he or she is immune however erroneous the act may have been , however injurious the consequences of the act may have been, and irrespective of the judge's claimed motivation. *Harvey v Waldron 210 F 3d 1008, 1012 (9th Cir 2000).*

Because the allegations in the complain all relate to actions taken by Newsome in his judicial capacity , actions that were well within his jurisdiction , plaintiff's claims are barred by judicial immunity. Accordingly the motion for an order dismissing the complaint is granted. Further, the court finds that the pleading cannot possibly be cured by the allegation of other facts , and that the amendment would therefore be pointless . Accordingly , the dismissal is with prejudice.

This order terminates the case and any pending motions. The clerk is ordered to close the file. It is so ordered .

May 20, 2002

ss/'Phyllis J. Hamilton
United States District Judge